

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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JEFFREY DESKOVIC,

No. CV-07-8150 (KMK)(GAY)

Plaintiff,

v.

CITY OF PEEKSKILL, et al.

Defendants.

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CITY OF PEEKSKILL,

Third-Party Plaintiff,

v.

AMERICAN ZURICH INSURANCE COMPANY, et al.

Third-Party Defendants.
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**THIRD-PART DEFENDANT ZURICH AMERICAN INSURANCE COMPANY'S
OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL**

We represent Third-Party Defendant, Zurich American Insurance Company (incorrectly named as American Zurich Insurance Company)("Zurich") and hereby oppose Plaintiff Jeffrey Deskovic's Motion to Compel Complete Copy of Zurich American Insurance Policy Issued to Defendant City of Peekskill, filed with this Court on July 6, 2012. Because Zurich has conducted a search for the policy and produced all documents in its possession comprising the policy, we oppose plaintiff's motion to compel.

Zurich issued excess liability policy number CEO 6102583-01 to the City of Peekskill ("Peekskill"), with effective dates December 31, 1989 to December 31, 1990 (the "Zurich Policy"). Zurich conducted a search to locate a complete copy of the policy and produced those documents in its possession included in the Zurich Policy. See Affidavit of Jane Turner, filed

herewith, ¶¶ 2-3; and Exhibit A. Zurich's search was ongoing and policy forms were produced on a rolling basis as they were located on June 28, 2012, July 16, 2012 and September 20, 2012.

The Declarations page of the Zurich Policy lists the following forms as comprising the policy: U-ES-100002-A, U-GL-113-BCW #1 - #6, U-GU-243-A and U-ES-10019-A NY (9-98). The documents produced referenced above include all of these forms, with the exception of the first page of Endorsement U-ES-10019-A NY (9-88). See Affidavit of Jane Turner, filed herewith, ¶5; and Exhibit A.

Pursuant to our letter to the Court, dated October 5, 2012 (D.E. 507), Plaintiff's counsel requested that Zurich produce a complete copy of Endorsement U-ES-10019-A NY (9-88), as it appears the first page of the endorsement was missing from the Zurich Policy documents produced. Zurich conducted a further search to locate a complete copy of Endorsement U-ES-10019-A NY (9-88) and has been unable to locate a complete copy of the endorsement. See Affidavit of Jane Turner, filed herewith, ¶¶ 4-5.

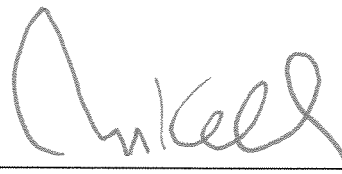
Per Fed. R. Civ. P. 26(a)(1)(A)(iv), a party must provide "for inspection and copying . . . , any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment." Fed. R. Civ. P. 26(a)(1)(A)(iv). The federal discovery rules require a party to make initial disclosures "based on the information then reasonably available to it." Fed. R. Civ. P. 26(a)(1)(E). Although "[a] party is not excused from making its disclosures because it has not fully investigated the case . . . ," such is not the case here where Zurich has undertaken a search to locate a complete copy of the Zurich Policy. Fed. R. Civ. P. 26(a)(1)(D).

The Zurich Policy documents produced to date constitute all of the documents within Zurich's possession that comprise the Zurich Policy. See Affidavit of Jane Turner, filed herewith, ¶6 and Exhibit A.

CONCLUSION

For the reasons stated herein, we respectfully request that the Motion to Compel be denied in its entirety.

DATED: New York, New York
October 26, 2012



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